

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-07-SE-299
CoachComm, LLC)	NAL/Acct. No. 200832100080
)	FRN # 0018087262
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 4, 2008**Released: September 8, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find CoachComm, LLC ("CoachComm") apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended ("Act"),¹ and Section 2.803(a)(1) of the Commission's Rules ("Rules").² The noted apparent violations involve the marketing of an unauthorized radio frequency device.

II. BACKGROUND

2. On August 15, 2007, the Spectrum Enforcement Division of the Enforcement Bureau ("Division") received a complaint regarding CoachComm's manufacture and marketing of a wireless intercom system under the trade name Connex that uses a belt pack and base station configuration. The Connex system incorporates a radio frequency ("RF") transmitter module³ (FCC Identification Number HSW-2410M) ("HSW-2410M module") manufactured by Cirronet Corporation ("Cirronet") that operates using spread spectrum emissions at 2.4 GHz (2401.69 to 2469.89 MHz). Cirronet's authorization for this module allows use as a mobile or fixed device for RF radiation exposure compliance purposes. The complainant, however, asserts that the Connex system makes use of the module in a portable device and thus, operates outside the scope of Cirronet's authorization. The complainant also asserts that the system violates technical rules governing antenna use, output power limits, and RF emission levels.

3. On January 8, 2008, the Division issued a Letter of Inquiry ("LOI")⁴ to CoachComm. In its February 6, 2008 response to the LOI ("LOI Response"),⁵ CoachComm admits that from the time it

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1), 2.932(a) and 15.201(b).

³ In 2007, the Commission defined the term "modular transmitter" as "a completely self-contained radio-frequency transmitter device that is typically incorporated into another product, host or device." *See Modifications of Parts 2 and 15 of the Commission's Rules for Unlicensed Devices and Equipment Approval*, Second Report and Order, 22 FCC Rcd 8028, 8032 ¶11 (2007) (*Modifications of Parts 2 and 15 Second Report and Order*).

⁴ *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Peter Amos, President, CoachComm, LLC (January 8, 2008).

⁵ *See* Letter from John Joseph McVeigh, Esq., Counsel for CoachComm, LLC to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (February 6, 2008) ("LOI Response").

introduced the Connex system in May 2004, until approximately April 2007, it employed the HSW-2410M module in both the base stations (“command centers”) and wireless belt packs of the Connex system.⁶ In May 2007, CoachComm began substituting the HSW-2410M module with a different Cirronet RF module (FCC Identification Number HSW-2492) that was authorized for portable device use, but continued to employ the HSW-2410M module to a limited degree.⁷ Accordingly, CoachComm states that of the Connex systems shipped between May and December of 2007, some employed the HSW-2410M module but the vast majority employed the HSW-2492 module.⁸

4. CoachComm explains that until it received the Division’s LOI, it believed that the existing equipment authorization for the HSW-2410M module was sufficient for the lawful use of the module in the Connex system.⁹ When CoachComm discovered that this authorization was insufficient, Cirronet obtained, at the request of CoachComm, a modified equipment authorization (FCC Identification Number HSW-2410P) allowing for portable device use of the module on January 29, 2008. CoachComm emphasizes that no physical or electrical changes to the module were required in order to obtain this authorization.¹⁰ CoachComm further states that the Connex system is well within the effective output power limit of one watt for digitally modulated spread spectrum devices in the 2.4 GHz band, as set forth in Section 15.247(b)(4) of the Rules,¹¹ and that the four antennas offered with the Connex system (two external antennas, one corner-reflector antenna, and one internal patch antenna) have been authorized for use with the HSW-2410M module since CoachComm introduced the Connex system in May 2004.¹²

5. CoachComm admits, however, that it failed to comply with the terms of the initial certification regarding RF exposure levels when it failed to give instructions relating to a 20 cm separation between the radiating aperture of the command stations’ antennas and all persons.¹³ CoachComm states that it instructed users to keep the command stations between four and nine feet apart and to attach the corner-reflector antenna to an appropriate fixture within the press box containing the command station.¹⁴ According to CoachComm, the distance between the command centers, the low power levels, and the narrow bandwidths of the corner-reflector antennas work in concert to limit excess RF exposure.¹⁵

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.* We note that CoachComm’s failure to obtain a certification for portable device use in this case does not raise safety concerns because the source-based time-averaged RF output power is below the threshold level required for SAR testing per OET equipment authorization policies, and as a general matter, part 15 spread spectrum devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use. See 47 C.F.R. § 1.1307(b)(1), 2.1093(c), and 15.247(i).

¹¹ 47 C.F.R. § 15.247(b)(4). As explained by CoachComm, the peak output powers of the initial and substitute RF modules are 69 mW and 60 mW, respectively. Because the directional corner reflector antenna has a gain of 9 dBi, however, the one watt power limit must be derated to reflect the coverage of a 6 dBi antenna. Both modules are below the derated limit of 500 mW ($-3 \text{ dB} = 10 \log (X \text{ mW}/1000 \text{ mW})$, where X equals a maximum power of 500 mW). See LOI Response at 5.

¹² See LOI Response at 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 4.

III. DISCUSSION

6. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with the regulations promulgated pursuant to this section.”¹⁶ Section 2.803(a)(1) of the Commission’s implementing regulations provides in pertinent part:

[e]xcept as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radiofrequency device¹⁷ unless ... in the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by §2.925 and other relevant sections in this chapter.¹⁸

Under Section 15.201(b) of the Rules, an intentional radiator¹⁹ must be authorized in accordance with the FCC’s certification procedures prior to marketing in the United States.²⁰

7. Under Section 2.932 of the Rules, a change in the design, circuitry or construction of a previously authorized device requires the filing of a new equipment authorization, unless such a change constitutes a permissive change.²¹ As set forth above, CoachComm integrated the HSW-2410M module into its Connex system, a system designed for portable device use. The certification for the HSW-2410M module does not, however, permit portable device use. Thus, under Section 2.932(a) of the rules, the Connex system could not be marketed in the United States prior to grant of a new equipment certification authorizing portable device use of the module.

8. Moreover, while the grantee of an equipment certification is generally responsible for demonstrating compliance of its device with applicable technical and administrative requirements, a system integrator may become the responsible party under Section 2.909(a) of the Rules where, as here, the incorporation of a certified module into a host product results in operation or use that is inconsistent with the initial authorization.²² CoachComm, as the system integrator, became the party responsible for ensuring that its use of the HSW-2410M module complied with our technical and administrative rules.

¹⁶ 47 U.S.C. § 302a(b).

¹⁷ A “radiofrequency device” is “any device which in its operation is capable of emitting radio frequency energy by radiation, conduction, or other means.” 47 C.F.R. § 2.801.

¹⁸ 47 C.F.R. § 2.803(a)(1).

¹⁹ An “intentional radiator” is “any device that intentionally generates radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3(o).

²⁰ 47 C.F.R. § 15.201(b). Section 2.803(e)(4) of the Rules, 47 C.F.R. § 2.803(e)(4), defines “marketing” as the “sale or lease, or offering to sale or lease, including advertising for sale or lease, or importation, shipment or distribution for the purpose of selling or leasing or offering for sale or lease.” A certification is an equipment authorization issued by the Commission or one of its designated Telecommunications Certification Bodies, based on representations and test data submitted by the applicant. See 47 C.F.R. §§ 2.907(a) and 2.960.

²¹ 47 C.F.R. §§ 2.932 and 2.1043. While arguably a Class II permissive change may have been acceptable in this circumstance, this fact does not affect the outcome of this case, as Commission approval of the Class II permissive change or a new authorization is required prior to marketing.

²² 47 C.F.R. § 2.909(a). See also *Modifications of Parts 2 and 15 Second Report and Order*, 22 FCC Rcd at 8034; *Ryzex, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 878, 881 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending* (holding that under Section 2.909(a) of the Rules, a non-grantee that modifies equipment is responsible for ensuring that the modified equipment complies with applicable technical and administrative rules).

Accordingly, because CoachComm failed to obtain an equipment certification authorizing use of the module for portable device use prior to marketing the Connex system, it apparently willfully²³ and repeatedly²⁴ marketed an unauthorized radio frequency device in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

9. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁵ Having considered the statutory factors, as explained below, we propose a base forfeiture of \$7,000 for marketing non-compliant transmitters.

10. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL. Section 503(b)(6) of the Act does not, however, bar the Commission from assessing whether CoachComm’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. Thus, while we may consider the fact that CoachComm’s conduct has continued over a period that began in May 2004, the forfeiture amount we propose herein relates only to CoachComm’s apparent violations that have occurred within the past year.

11. Under *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”) and Section 1.80 of the Rules, the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. CoachComm marketed unauthorized radio frequency equipment. Specifically, CoachComm marketed one system that included the same RF transmitter in both the wireless headsets and command stations. For the apparent marketing of this unauthorized device, CoachComm is apparently liable in the amount of \$7,000.²⁶

²³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

²⁴ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

²⁵ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁶ See, e.g., *Gibson Tech. Ed, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14438, 14441 (Enf. Bur., Spectrum Enf. Div. 2005) (proposing a \$7,000 base forfeiture for the marketing of each unauthorized model), *forfeiture ordered*, 21 FCC Rcd 2914 (Enf. Bur., Spectrum Enf. Div. 2006), *recon. denied*, 21 FCC Rcd 9642 (Enf. Bur. 2006); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3448 (Enf. Bur., Spectrum Enf. Div. 2005) (same), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005); *Via Technologies*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 19556 (2004) (Enf. Bur., Spectrum Enf. Div. 2004) (same), *forfeiture ordered*, 19 FCC Rcd 24341 (2004).

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁸ CoachComm, LLC **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for the willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁹ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, CoachComm LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. CoachComm will also send electronic notification on the date said payment is made to Ricardo. Durham@fcc.gov and Nissa. Laughner@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to CoachComm LLC, 205 Technology Pkwy, Auburn, Alabama 36830-0500 and to John Joseph McVeigh, Esquire, Counsel for CoachComm, 16230 Falls Road, P.O. Box 128, Butler, Maryland 21023-0128.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁷ 47 U.S.C. § 503(b).

²⁸ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁹ 47 C.F.R. § 1.80.